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AM 2009-023

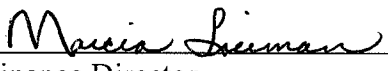
FREDERICK EPISCOPAL CHURCH REZONE FROM R-1 TO C-D FOR LOTS 3, 5, AND 6 EVEZICH MINOR SUBDIVISION

Agenda Date: March 10, 2009

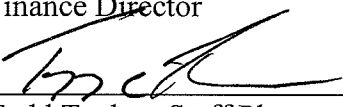
Attachments:

- a. PCR-2009-02C Conditional Approval
- b. Minutes from the Planning Commission Meeting
- c. Applicant's description of the proposal
- d. Petition from neighboring property owners
- e. Resolution
- f. Ordinance
- g. Vicinity Map
- h. 11x17 Zoning Amendment Map

Fiscal Note: None noted or provided Fiscal note



Finance Director

Submitted by: 

Todd Tucker, Staff Planner

Approved for Presentation: 

Derek Todd, Town Administrator

AV Use Anticipated Projector X Laptop X

Certification of Board Approval:

Town Clerk

Date

Summary Statement:

The applicant has requested approval to rezone an 8.13 acre site (lots 3, 5, and 6 of the Evezich Minor Subdivision) from R-1 (residential) to C-D (Downtown Commercial) to allow for a proposed Church as a use by right and for related mixed uses.

Detail of Issue/Request:

Applicant / Owner: First Street Frederick LLC
Scott Asper
Colorado Episcopal Foundation
1300 Washington St., Denver, CO 80203

Agent: John Thornberry, Felicia Smith-Graybeal

Surrounding Land Uses and Zoning:

North Residential, Evanston, Unincorporated Weld County - Agricultural
South Residential, Frederick Town Site, Town of Frederick – R-1
East Public, Park View Estates, Town of Frederick – R-1
West Residential, Evanston, Unincorporated Weld County - Agricultural

Discussion:

Frederick Episcopal Church requests that the zoning for the 8.13 acre site be changed from R-1 to Downtown Commercial (C-D) to allow for the proposed Church (St. Brigit) and the anticipated ancillary uses as a use by right. While the Church has not developed a site plan or determined all of the anticipated uses, they have proposed to convert an existing barn to worship space, and will add parking for 20 cars (including three handicap spaces) to serve the converted barn. Note that the parking lot is on a separate parcel from the church. Since a parking lot is permitted as a principle use only if approved by special use review in the C-D district, staff recommends that the proposed parking lot be combined with the church lot to combine the necessary facilities that support the proposed Church on one parcel, promote contiguity of uses, and conform to the Code. Furthermore, landscaping should be installed to further conformance with Code requirements once the parking area is installed.

The Episcopal Church also indicates the desire to build a future church and school on the property, host a youth group room, provide a community meeting room, a day care, and may provide other community related use commonly associated with Church functions, however this has not yet been designed and it may be several years before a new Church and School are developed. The proposed uses will be determined by the needs of the community and will evolve as the community evolves as determined by the Church. To ensure that the anticipated uses are permitted as a use-by-right, the Church has proposed a zoning change from R-1 to C-D. In examining the zoning code, there are various uses permitted by right or conditional use in each zone as shown in Table 1 below.

Table 1 Comparison of Anticipated Uses by Zoning District

Use / Zone	R-1	Downtown commercial
Worship space / youth group	Conditional use	Use-by-right
Child care center	Not permitted	Use-by-right
Community meeting / facility	Conditional use	Use-by-right
Private school	Conditional use	Conditional use
Shopping less than 5,000 sq. ft.	Not permitted	Use-by-right

While not noted in the application, many Churches operate thrift stores as a community benefit and for additional revenue. Under the Code, a thrift store (shopping less than 5,000 sq. ft.) would also be a use-by-right in the C-D zone that would not be permitted in the R-1 Zone.

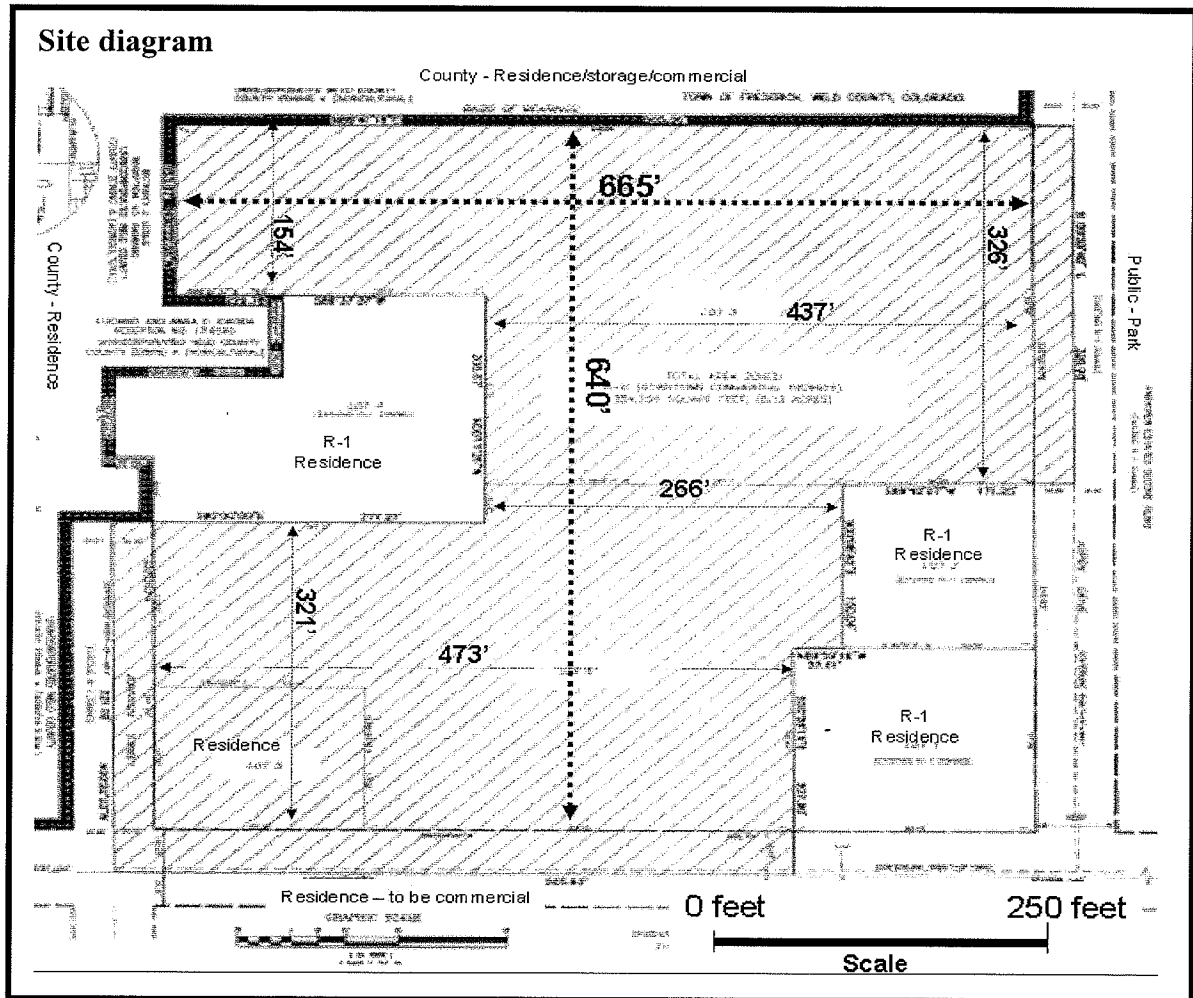
The sight is bound to the west by Johnson Street (Oak Street), south by First Street, and to the east by Aspen Drive. Both Johnson and Oak Street have commercial uses in proximity to the site, with C-D zoning located a block south of the site on Oak Street in the Town of Frederick. Oak Street also connects the site to 5th Street (Frederick's downtown commercial core). First Street extends from Colorado Boulevard to Ridgeway Boulevard and separates the subject land from what is planned to be commercially zoned, and is a modified arterial street in accordance with the Comprehensive Plan. There is also a neighborhood park, fire station, and an existing church (community facilities) adjacent to or in proximity to the site. Other adjacent properties, to the north, have commercial or storage activities associated with them. Therefore, the proposed zoning is consistent with current and proposed land use activities and trends that are adjacent and in proximity to the property.

The approval of the zoning change would allow the church and certain ancillary uses as a use-by-right, as noted in Table 1 above and further detailed in the Land Use Code. Even as a use-by-right all development would be subject to the requirements of the Land Use Code, including but not limited to Site Plan Review or Conditional Use Review as applicable. In addition, Article 3 of the Land Use Code has established various residential protection standards with minimum setbacks from residential uses in the residential zone that vary from 250 feet to 1,000 feet, depending on the type of use (see table 2).

Table 2. Uses limited by residential protection standard setbacks

Land Use	Minimum required setback
Automobile service station, repair and maintenance, and painting or body work	250 feet from nearest residence / zone
Bar, Tavern, nightclub, liquor store	250 feet from nearest residence/ zone
Transit Terminal	250 feet from nearest residence / zone
Outdoor sales, repair and activities	250 feet from nearest residence / zone
Drive in Restaurants	250 feet from nearest residence / zone
Transportation Depots	250 feet from nearest residence / zone
Adult uses	1,000 feet from nearest residence / zone

While the property is roughly 660 feet wide by 640 feet deep, due to the irregular configuration of the site, little to none of the subject property is less than 250 feet from an existing residence or adjacent R-1 zone (see site diagram below). Therefore, none of the uses listed in Table 2 could be developed due to the residential protection standards established in the Land Use Code.



In summary, worship space and community facilities, such as the Church, meeting room, Church thrift shop, and youth group rooms are permitted as a use-by-right in the C-D zone and by Conditional Review in the R-1 zone. In addition, staff finds that, due to the configuration of the parcel, the potential types of commercial uses that could use this property are limited by the residential protection standards. Furthermore, staff finds that if the site were not developed for religious purposes, small commercial development such as a drug store or ice cream shop, etc, may be an asset to the community on this location and assist in the preservation of other residential areas within the original Town site while supporting the current and planned commercialization of areas south of First Street.

Referral: The application was referred per the provisions of the Land Use Code. All referral responses are on file with the Planning Department.

A petition was received (see attached) signed by 36 people representing 25 homes (20 homes within Frederick's municipal boundary), indicating opposition to the proposed commercial zoning.

Staff also received six phone calls expressing opposition to having more churches in the community. While it is uncertain if the phone calls were from the same people that signed the petition, two calls came from Loraine Williams. Ms. Williams expressed the opinion that we need more retail, not more churches in the Town, she also expressed the desire that the Catholic Church be permitted to expand in the future. Peter Schroth (111 Emilio Ct) also called and indicated that the application should not be approved, as it does not bring revenue to the Town.

No other referral indicated conflicts with the request.

Public Notice: The public meeting was noticed in accordance with the provision of the Land Use Code.

Review Criteria: Section 4.7.2.d of the *Land Use Code* sets the review criteria for amendments to the official zoning map:

Review Criteria. 4.7.2.d. For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the official zoning map shall not be amended except:

- (1) **To correct a manifest error in an ordinance establishing the zoning for a specific property;**
- (2) **To rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the Town generally;**
- (3) **The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the Comprehensive Plan;**
- (4) **The proposed rezoning is necessary to provide land for a community-related use that was not anticipated at the time of the adoption of the Comprehensive Plan, and the rezoning will be consistent with the policies and goals of the Comprehensive Plan;**
- (5) **The area requested for rezoning has changed or is changing to such a degree that it is in the public interest to encourage development or redevelopment of the area; or**
- (6) **A rezoning to Planned Unit Development overlay district is requested to encourage innovative and creative design and to promote a mix of land uses in the development.**

This request is to rezone the area due to changing conditions, (see 4.7.2.d.2), and allow for a proposed church.

The subject area is currently zoned R-1. The mapped Comprehensive Plan has established this location for low density residential Development (up to five units per acre or 40 homes), however, this site abuts the greater downtown area, several single family homes, a park, a fire station, the original Town of Frederick town site, and a modified arterial street. There is also a Baptist Church just north of the site on Johnson Street and several small commercial uses in close proximity to the site on both Johnson and Oak Streets. The adjacent original town site has been designated by the Comprehensive Plan for Downtown Commercial uses (C-D zone), while the fire station is a Public Facility, and the park is designated as a Park. There is a neighboring church and some small commercial uses (located in the County), in close proximity and are zoned Agricultural. The Baptist church, fire-station, and park are community-related facilities similar to the proposed Church. Over time, the original town site will transition to the C-D

zone. While the proposed C-D zone for this site does not match the Low Density Residential designation shown on the Comprehensive Plan Map, the request is consistent with the Policies and Goals of the Comprehensive Plan, as well as many existing and anticipated neighboring land uses. Moreover, the zoning change provides for a community-related use (Church) that was not contemplated at the time of adoption of the Comprehensive Plan (4.7.2.d.4), and responds to the changing conditions by recognizing the existing and planned neighboring uses which include small businesses (4.7.2.d.2).

With regard to the potential for spot zoning, this allegation may occur where the rezoning will permit land uses not available to the adjacent property. This site consists of three parcels totaling eight acres, which is unique in the downtown area. There are existing community and commercial uses in proximity to the site and the site is adjacent to what has been designated as a commercial use (original town site) by the Comprehensive Plan. Note that the adopted Comprehensive Plan indicates that the long term goal of the Town is to promote a transition in the original town site from residential zoning to a Downtown Commercial zone. Therefore, other properties adjacent to the site are also eligible for a similar re-zone. The site is proposed to be an extension of these anticipated Commercial areas (located to the south), as well as current community uses located to the north and east of the site. It is also an extension of existing commercial uses located in proximity to the site both within and beyond the Town limits. While the request does not conform to the map of the Comprehensive Plan, there are no conflicts with the adopted goals and policies. Furthermore, the site is unique in its size and configuration and the re-zone provides a public benefit that was not contemplated at the time of adoption of the Comprehensive Plan and meets two of the technical criteria for approval as defined by the Land Use Code. Therefore, staff finds that the proposed development is in proximity to existing community related uses, as well as, existing and proposed commercial zoning and activities; thus it recognizes the changing conditions of current and proposed adjacent land uses and activities on neighboring parcels and does not constitute spot zoning.

In short, the rezone recognizes surrounding land use activities and provides for changing conditions within a particular area (4.7.2.d.2); and provides for a community related use that was not contemplated at the time of adoption of the Comprehensive Plan (4.7.2.d.4). Therefore, the request is consistent with two of the criteria for approval of a zoning change. Note that only one of the criteria must be met for approval of the request.

Planning Commission. The Planning Commission considered the request at a public hearing on February 17, 2009. There were several members of the public that spoke in favor and against the proposed rezone, however not one of the speakers opposed the proposed use of the site as a Church. One Planning Commission member recommended that a PUD overlay may be imposed to prohibit commercial uses, limiting the use of the site to Church related uses. Other Commissioners expressed that the site had sufficient limitations and residential protections under the existing Land Use Code.

Staff advised the Commission that they could recommend to the Trustees adoption of a PUD Overlay which could limit the uses to Church related activities. However, PUD's generally are established to supplement the underlying zoning in association with a master plan for large tracts of land, to encourage innovative design, preserve critical environmental resources, and develop above average recreation or open space. While a PUD could be imposed on the site, staff finds that the benefits of a PUD on a small eight acre tract of land are minimal, particularly since there are sufficient protections in the Code (as related to the residential protection

standards that limit or preclude commercial uses that have been noted as objectionable by the neighbors). Staff also suggested that if the site were not developed as a church and school site as contemplated, some small commercial uses (meeting the residential protection standards) may be appropriate for this parcel, which is located on a modified arterial road and adjacent or in proximity to other community uses such as the fire station and park, and commercial sites both within and beyond of the Town limits. Lastly, as noted above, the re-zone does not constitute spot zoning.

The Planning Commission voted to approve the proposed zoning subject to two conditions (see below) in a three to one vote. The dissenting vote indicated a preference to add a PUD overlay limiting future land uses as noted above.

Legal/Political Considerations:

None noted.

Alternatives/Options:

Actions: The Board of Trustees can consider the following options regarding the application:

- ☐ Approve of the request finding it is substantially in conformance with the provisions of the Land Use Code and Comprehensive Plan;
- ☐ Deny of the request with a finding that it does not substantially achieve conformance with the provisions of the Land Use Code and Comprehensive Plan;
- ☐ Approve the request finding that it would be substantially in conformance with the provisions of the Land Use Code and Comprehensive Plan if certain conditions are met;

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff and the Planning Commission recommend approval of the proposed rezone from Residential (R-1) to Downtown Commercial (C-D) subject to the following conditions:

- a. A Subdivision Amendment shall be submitted for consideration within six months of approval of the zoning change to combine the parking for the proposed Church with the church parcel.
- b. In conjunction with the Subdivision Amendment, a Landscape Plan shall be submitted for review and approval by Planning Staff. The Landscape Plan shall screen the parking area in accordance with the provisions of the Land Use Code. Landscaping shall be installed within six months of approval for the Subdivision Amendment.